Supreme Court, U.S.
FILED

071413 MAR 10 2008

OFFICE OF THE CLERK

No. ①

IN THE SUPREME COURT OF THE UNITED STATES

DAVID JOSEPH MUNCHINSKI,
Petitioner,
v.
GERALD SOLOMON, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF FAYETTE COUNTY, PENNSYLVANIA; RALPH WARMAN, IN HIS INDIVIDUALCAPACITY AND IN HIS OFFICIAL CAPACITIES AS DISTRICT ATTORNEYAND FIRST ASSISTANT DISTRICT ATTORNEY OF FAYETTE COUNTY; JOHN A. KOPAS, III, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS FIRST ASSISTANT DISTRICT ATTORNEY OF FAYETTE COUNTY; HUMPHREY LUKACHIK, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS CHIEF COUNTY DETECTIVE, FAYETTE COUNTY, PENNSYLVANIA; GEORGE FAYOUCK, IN HIS INDIVIDUAL CAPACITY; AND ROBERT MANGIACARNE, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS CHIEF COUNTY DETECTIVE, FAYETTE COUNTY, PENNSYLVANIA,
Respondents.

On Petition for Writ of Certiorari from the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Noah Geary, Esquire
Counsel for Petitioner
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Washington, PA 15301
(724) 222-3788
Filed on Behalf of:
David Joseph Munchinski,
Petitioner

QUESTIONS PRESENTED FOR REVIEW:

I. Did the Third Circuit Court of Appeals enter a decision in this matter which is in conflict with decisions of other United States Courts of Appeal on the same important matter?

II. Did the Third Circuit Court of Appeals enter a decision in this matter which decides an important federal question in a way that conflicts with relevant decisions of this Court?

III. Did the Third Circuit Court of Appeals so far depart from the accepted and usual course of judicial proceedings and sanction such a departure by a lower court that it calls for the exercise of this Court's supervisory power?

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I. The Third Circuit Court of Appeals entered a decision in this matter which conflicts with decisions of other United States Courts of Appeal on the same important matter.

II. The Third Circuit Court of Appeals entered a decision in this matter which decides an important federal question in a way that conflicts with relevant decisions of the United States Supreme Court.

III. The Third Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court that it calls for the exercise of this Court's supervisory power.

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TABLE OF AUTHORITIES:

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Burns vs. Reed,
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Manning vs. Miller,
355 F.3d 1028, 1032-33 (7th Cir. 2004)

Paine v. City of Pompoc,
265 F. 3d 975, 981-84 (9th Cir. 2001)

Walker vs. City of New York,
974 F. 2d 293 (2nd Cir. 1992)

Constitutional Provisions, Statutes and Rules:

42 U.S.C. Section 1983

28 U.S.C. Section 1254(1)

Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution

OPINIONS AND ORDERS BELOW:

The opinion and order of the Court of Appeals for the Third Circuit affirming the order of the District Court which granted defendants' 12(b)(6) Motion, dated October 26, 2007 was not reported and appears at Appendix page **81A**. The Petitioner for Rehearing En Banc was denied on December 11, 2007 per order appearing at Appendix page **91A** . The opinion and order of the District Court for the Western District of Pennsylvania dated August 16, 2006 appears at Appendix page **43A**.

STATEMENT OF JURISDICTION:

Petitioner David Joseph Munchinski seeks this Honorable Court's review of the Judgment of the United States Court of Appeals for the Third Circuit entered on September 27, 2007. Rehearing was requested but was denied on December 11, 2007. The Petitioner invokes this Honorable Court's jurisdiction pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED:

This Petition involves the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution in a Civil Rights action brought pursuant to 42 U.S.C. Section 1983 setting forth principal claims of malicious prosecution, violation of Petitioner's right to a fair trial guaranteed him by the United States Constitution and of conspiracy to deprive the Petitioner of a fair trial.

STATEMENT OF THE CASE:

The Petitioner was convicted in 1986 in Fayette County, Pennsylvania Court of Common Pleas of two counts of first-degree murder and sentenced to two consecutive life sentences. The case involved a double murder in 1977 which was unsolved for five years.

After a Second Post-Conviction Relief Proceeding in the Commonwealth of Pennsylvania, the Court overturned Petitioner's convictions, Barred re-trial, and Ordered his immediate release. The Court ruled that Petitioner's prosecutors engaged in

(i) intentional;

(ii) deliberate;

(iii) egregious;

(iv) patent; and

(v) ongoing

prosecutorial misconduct to obtain Petitioner's convictions.

The Post-Conviction Relief Court specifically found that the prosecutors committed intentional, on-going prosecutorial misconduct throughout four different legal proceedings over a span of twenty-five years. The intentional misconduct was committed during Petitioner's first trial which resulted in a hung jury, his 1986 re-trial at which he was convicted; throughout a first Post-Conviction collateral proceeding in 1992-1993, and a first Federal Habeas Corpus Proceeding in 1998-2001.

The intentional misconduct included, inter alia:

(1) the intentional destruction of exculpatory evidence; and

(2) intentional concealing of the intentional destruction of exculpatory evidence; and

(3) tampering with Official Police Reports; and

(4) intentional suppression/withholding of blatantly exculpatory evidence; and

(5) repeated lying as an Officer of the Court to the Court during the first Post-Conviction Relief Proceeding as to the completeness of three police files which were Ordered to be produced to the PCRA I Court – which contained, prior to their "sanitation" by the prosecutors, the bulk of the exculpatory evidence at issue which the Petitioner did not obtain for 10 more years.

In addition to intentionally destroying discoverable evidence and concealing this destruction, the prosecutors, among many other things, hid, in the discovery process, a police report which established that their star witness and purported "eyewitness" to the murders was actually in Oklahoma on the night of the murders and not even in the State of Pennsylvania.

Further, this case uncovered a pattern by the Fayette County District Attorney's Office of withholding Brady material from criminal defendants in, at least, the early 1980s. Specifically, immediately before Munchinski was arrested in October of 1982, two other first-degree murder convictions were reversed due to the withholding of exculpatory evidence by the identical prosecutors. See Commonwealth vs. Contakos, 492 Pa. 465, 424 A. 2d 1284 (1981) and Commonwealth vs.Walters, 303 Pa. Super 203, 449 A. 2d 449 (1982).

In support of its sweeping grant of relief, the Post-Conviction Relief Court declared:

> "At a minimum, the circumstances surrounding these homicides and the subsequent events involving the principal cast of characters in this tragic drama lend themselves to the term extraordinary."
>
> *(PCRA II Court Opinion, p. 7).*

. . .

"Was Munchinski's a fundamentally unfair conviction? We find the answer to the question without any doubt or question. We rely on our findings of fact and conclusions of law to state without equivocation that Munchinski was wrongly convicted because of patent and ongoing prosecutorial misconduct involving the Constitution of the United States, the Pennsylvania Constitution and the various cases cited... Therefore, in a case such as this, involving deliberate and ongoing prosecutorial misconduct, at a minimum, automatic reversal and a new trial is proper. However, deliberate efforts of, as in this case, three different prosecutors, in two trials and one PCRA proceeding, to undermine the search for truth, clearly is in the category of offenses anathema to our most basic vision of the role of the Commonwealth in the criminal process" *(108, 114)*.

. . .

"In this case, the intentional failure of three different prosecutors (two at trial and one at the first PCRA proceeding-the latter of which

> clearly did not result in a full and informed adjudication and refutes the Commonwealth's assertion as to previously litigated) in not disclosing exculpatory and/or material evidence ("*Brady* Material") and/or the intentional suppression of material evidence as reflected by the eleven "after discovered" documents, as well as the improper and surreptitious manner in which one prosecutor redacted a critical police report all constitute prosecutorial misconduct that violated all principles of justice and fairness included in the Pennsylvania Constitution's double jeopardy clause. We believe this case reflects a greater number of "*Brady*" violations and an ongoing course of prosecutorial and police misconduct as compared to the violations in the *Smith* case. *(Page 3 of January 14, 2005 Order of the Trial Court Ordering the immediate discharge of Petitioner after a record hearing, footnote.)*

Upon winning his case, Petitioner filed a Section 1983 Civil Rights action against his former County prosecutors, the County detectives, and a State Trooper - solely in his individual capacity. The claims included

malicious prosecution and intentionally denying his right to a fair trial by destroying discoverable, exculpatory evidence, intentionally concealing the intentional destruction of discoverable evidence, and in intentionally suppressing 12 pieces of blatantly exculpatory evidence.

Petitioner plead that his Sixth Amendment right to a fair trial was violated, his Sixth Amendment right to effectively confront and cross-examine witnesses who testified against him was violated, and that his prosecutors violated his Fourteenth and Fifth Amendment rights to due process before being denied his liberty.

The Federal District Court granted the defendants' 12(b)(6) Motion to dismiss the 1983 action as premature because the Commonwealth of Pennsylvania, through its Attorney General's Office, appealed the decision of the Second Post-Conviction Relief Court's

Grant of Relief. The basis was that the grant of Post-Conviction Relief was not a final order. This component of the lower Court's ruling was correct. However, the District Court also ruled that Petitioner's prosecutors were entitled to absolute immunity upon a conclusion that they had acted on behalf of the Commonwealth of Pennsylvania rather than Fayette County when they committed the various violations of Petitioner's civil and constitutional rights. This conclusion was premised upon a conclusion that the prosecutors were engaging in prosecutorial functions when they violated Petitioner's rights rather than investigative, administrative, managerial or policy-making functions.

Petitioner timely appealed to the Third Circuit Court of Appeals, who affirmed the lower court in a perfunctory opinion.

The intermediate appellate court in Pennsylvania, the Superior Court, then reversed the PCRA Court's

grant of relief; Munchinski Petitioned to the Pennsylvania Supreme Court, who declined to exercise its discretion to hear his appeal.

Petitioner then filed, in December of 2007, a Second Application for Writ of Federal Habeas Corpus, which is pending before the Federal District Court in the Western District of Pennsylvania.

Petitioner requested re-hearing of the Third Circuit, which was denied.

Petitioner thus filed this timely Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT:

I. The Third Circuit Court of Appeals entered a decision in this matter which conflicts with decisions of other United States Courts of Appeal on the same important matter.

The Third Circuit Court of Appeals entered a decision in this matter holding that prosecutors are entitled to absolute immunity when they withhold exculpatory evidence/Brady material from criminal defendants and destroy exculpatory evidence in the pre-prosecution phase of the investigation.

This directly conflicts with numerous other Circuit Courts of Appeal.

The Second Circuit in Walker vs. City of New York, 974 F. 2d 293 (2nd Cir. 1992) ruled that

prosecutors do *not* get to invoke absolute immunity for committing Brady/discovery violations.

Similarly, the Seventh Circuit in Manning vs. Miller, 355 F.3d 1028, 1032-33 (7th Cir. 2004), holds that a prosecutor who withholds exculpatory evidence is *not* entitled to absolute immunity.

The Ninth Circuit in Paine v. City of Pompoc, 265 F. 3d 975, 981-84 (9th Cir. 2001) likewise holds that prosecutors are not absolutely immune from civil liability for actions involving the fabrication of evidence as part of the pre-prosecution investigation.

Accordingly, this decision by the Third Circuit is in clear divergence with other Circuit Courts of Appeal on this important issue. To maintain uniformity of decisions among the Circuits, the granting of this Petition is warranted.

II. The Third Circuit Court of Appeals entered a decision in this matter which decides an important federal question in a way that conflicts with relevant decisions of the United States Supreme Court.

The Third Circuit's decision also directly conflicts with United States Supreme Court precedent. In Buckley vs. Fitzsimmons, 509 U.S. 259, 133 S. Ct. 2606, 125 L. Ed. 2d 209 (1993), this Court ruled that there is no immunity for conduct in the preliminary stages of an investigation before there is probable cause sufficient to warrant an arrest. Fabrication of evidence during this stage was held to be actionable. Here, the prosecutors were present during the first interview with their eventual star witness and purported "eyewitness", Richard Bowen. (As set forth in the Statement of the Case section of this Petition, it was established that

Bowen was not even in the State of Pennsylvania on the night of the murders, but rather was in Oklahoma. This was established via an Official Police Report obtained as after-discovered evidence which was deemed by the PCRA II Court to have been intentionally suppressed by the prosecutors). Prosecutor Solomon conducted the interview and prosecutor Warman operated the tape recorder. The prosecutors were deemed by the PCRA II Court to have destroyed the tape of this original interview. They were also deemed to have tampered with an official police report to conceal the destruction of this tape.

Accordingly, the Third Circuit's decision is in direct contradiction with Buckley, supra, on the important issue of whether Petitioner's prosecutors are entitled to the defense of absolute immunity. The instant decision rules that the prosecutors are entitled to absolute immunity, while Buckley expressly holds that

they are not entitled to the defense of absolute immunity. The instant decision is clearly contrary to this established precedent, involves an important issue, and must be reconciled.

III. The Third Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court that it calls for the exercise of this Court's supervisory power.

The 3rd Circuit failed to comply with the fundamental doctrine of stare decisis. Its decision is in direct contradiction and in direct violation of the mandatory authority of Carter vs. City of Philadelphia, 181 F. 3d 339 (3rd Cir. 1999), a published opinion. Both the Third Circuit and the lower Court wholly ignored this mandatory authority. Neither made any mention of

it in their analysis, despite Petitioner clearly setting out that Carter governed this issue.

To fail to comply with stare decisis, which is the bedrock of appellate court analysis and the premise upon which uniformity and consistency of decisions is based, is a gross deviation and departure from accepted and usual appellate court review. It warrants this Court's review.

In McMillian vs. Monroe County, 520 U.S. 781 (1997), the United States Supreme Court explained that to determine whether an official is acting as a representative of a county or municipality rather than of the State, a review and analysis of the law of that state must be conducted to assess whether the official is treated, according to state law, as a State official rather than a county official. The point is, if the official is deemed to be a State official, he/she is entitled to sovereign immunity and cannot be sued in his/her

official capacity. Being sued in an official capacity is effectively a suit against the county or municipality.

Thus, to resolve the issue of whether these Appellees acted as representatives of the Commonwealth of Pennsylvania when they violated Appellant's rights or as representatives of Fayette County, it must be determined how Pennsylvania, in its Constitution, its Statutes, and case law, treats District Attorneys.

Following the directive of McMillan, The Third Circuit Court in Carter vs. City of Philadelphia, 181 F. 2d 339 (3rd Cir. 1999) engaged in an exhaustive analysis of this question, and ruled in no uncertain terms that in Pennsylvania, District Attorneys are county, and not state, officers.

Regarding the Pennsylvania Constitution, the Third Circuit held:

> "The Pennsylvania Constitution *expressly* defines District Attorneys as county rather

> than state officers. See Pa. Const., Article IX, Section 4 ("County officers shall consist of ... district attorneys...and such others as may from time to time be provided by the law.")
> Id., at 349. (Emphasis *not* added).

Regarding Pennsylvania Supreme Court case law, the Third Circuit held:

> "The Pennsylvania Supreme Court has held equivalent language from a prior version of the Pennsylvania Constitution to be "crystal clear": the Court explained that "[the Pennsylvania Constitution] states in the clearest imaginable language that district attorneys are county-not state officers, and in Philadelphia, by virtue of [its Charter and a Constitutional amendment making county officers into officers of the city], are City-not State-officers." Chafin v. Specter, 426 Pa. 464, 233 A.2d 562, 565 (1967).

Regarding Pennsylvania Statutes, the Third Circuit held:

> "Pennsylvania's statutes also establish that prosecutors are county officials. Under the Commonwealth Attorney's Act of 1850, 71 P.S. §§ 732-101, et seq., district attorneys were redefined as the "chief law enforcement officer[s] for the county in which [they were] elected." Id. at § 732-206 (a). Since that time, local district attorneys have been elected and funded by their counties".

The Third Circuit further observed:

> "Finally, Pennsylvania's statute defining the scope of sovereign immunity does not encompass district attorneys within its detailed definitions of the agencies and employees protected from suit. Consistent with its constitutional and statutory law, Pennsylvania's case law defines district attorneys as local, and expressly *not* state, officials. See Chafin 233 A.2d at 565. See also, e.g., Schroek v. Pennsylvania State Police, 26 Pa.Cmwlth. 41, 362, A.2d 486, 490 (1976)."
>
> *(Emphasis not added).*

Quite significantly, the Third Circuit in Carter ruled:

> "None of the Pennsylvania authorities cited actually holds that a district attorney is a state officer or arm of the state in *any* context (Id., 181 at 350).
>
> *(Emphasis not added).*

To emphasize this point, the Third Circuit declared:

> "[A]pplication of our Fitchik factors *compels us to find* that in Pennsylvania the prosecutor's office is not an arm of the state *either generally or with respect to the managerial functions in question."* Carter, at 181, footnote 38.
>
> *(Emphasis added).*

The Third Circuit explained its reasoning behind declining to afford prosecutors sovereign immunity – even to prosecutors who have engaged in prosecutorial functions:

> "[M]any local officials act in the name of the state and carry out delegated sovereign functions. Under such an expansive theory, every police officer, for example, would be entitled to Eleventh Amendment Immunity. Pennsylvania case law makes it clear that performance of an essential sovereign function on behalf of the state does not give rise to State surrogate status under state law".
>
> Carter, at 350-351.

While the Carter Court did observe that other Circuits (5th, 7th, 11th and the 3rd Circuit in Coleman vs. King –which interpreted New Jersey law, not Pennsylvania law)- made a distinction between prosecutorial functions versus administrative, investigative, managerial and policy-making functions, it declined to hold that prosecutors are entitled to sovereign immunity **even when engaging in prosecutorial functions.**

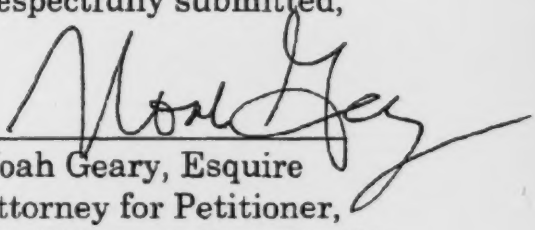
Thus, even if the at-issue functions were misconstrued as being prosecutorial functions by the lower Courts, under Carter, the prosecutors would still not be entitled to Sovereign Immunity. In reversing the District Court and rejecting the arguments made by the District Attorney's Office in Carter, the Third Circuit explained its rationale:

> "The District Court mischaracterizes the basis of Carter's claim as a prosecutorial function and declined to distinguish the Philadelphia DA's training/supervision/administrative activities from its core function of prosecution. In dismissing the possibility of a meaningful analytical distinction between a district attorney's prosecutorial and policy-making functions, the District Court adopted a position which would inappropriately pull all functions of the office within the scope of its (purportedly sovereign) prosecutorial function".
>
> Id., at 351.

CONCLUSION:

To secure and maintain the necessary uniformity of decisions among the Circuit Courts of Appeal as well as with the decisions of this Honorable Court, and because this Petition further satisfies additional criteria set forth in Rule 10, David Joseph Munchinski hereby **PRAYS** this Honorable Court to **GRANT** this Petition.

Respectfully submitted,



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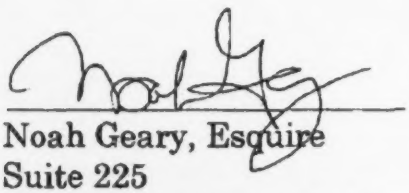
May 6, 2008

CERTIFICATE OF COMPLIANCE WITH WORD LIMITATION AS REQUIRED BY RULE 33:

I, Noah Geary, hereby certify that this Petition complies with the Word Limitation in conformity with Rule 33:



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CERTIFICATE OF SERVICE:

I, Noah Geary, hereby certify that I served the following parties with the foregoing **PETITION FOR WRIT OF CERTIORARI** via 1st Class Mail on this date:

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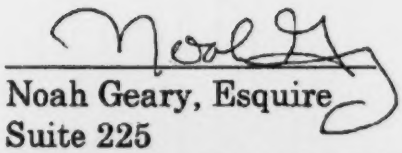

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

David Joseph Munchinski, Plaintiff, vs. Gerald Solomon, in his individual capacity and in his official capacity as District Attorney of Fayette County, Pennsylvania; Ralph Warman, in his individual capacity and in his official capacities as District Attorney and First Assistant District Attorney of Fayette County, Pennsylvania; John A. Kopas, III, in his individual capacity and in his official capacity as First Assistant District Attorney of Fayette County, Pennsylvania; Humphrey Lukachik, in his individual capacity and in his official capacity as Chief County Detective, Fayette County, Pennsylvania; George Fayouck, in his individual capacity; and Robert Mangiacarne, in his individual capacity and in his official capacity as Chief County Detective, Fayette County, Pennsylvania, Defendants. **JURY TRIAL DEMANDED.**	**CIVIL ACTION NO.** **COMPLAINT** **FILED ON BEHALF OF:** David Joseph Munchinski **COUNSEL OF RECORD:** Noah Geary, Esquire Suite 225 Washington Trust Bldg. Washington, PA 15301 (724) 222-3788 PA I.D. # 78382

INTRODUCTION:

On the night of December 2, 1977, two men in Fayette County, Pennsylvania were alleged to have been anally raped, and then shot to death.

The murders were unsolved for 5 years.

In October of 1982 the Plaintiff was arrested and charged with the murders, and began a cruel legal odyssey which involved him being wrongfully arrested, wrongfully charged, and wrongfully convicted in 1986 of two counts of first-degree murder. This, however, was not the beginning, nor the end, of the Defendants' outrageous violations of Plaintiff's constitutional rights. He was further wrongfully denied relief in a 1992 Post-Conviction Relief Proceeding and in a 1999 Federal Habeas Corpus Proceeding.

Throughout five (5) legal proceedings involving the murders, of which the Plaintiff is actually innocent, over a

span of more than twenty (20) years, the Defendants inter alia, engaged in a course of on-going conduct which included: the intentional manufacturing of false evidence; the destruction of blatantly exculpatory, discoverable evidence; doctoring with evidence, specifically, official, approved police reports of the Pennsylvania State Police to conceal the removal of blatantly exculpatory evidence; the intentional suppression and withholding of blatantly exculpatory evidence; and the intentional withholding of the existence of leniency agreements with witnesses and the payments of money to witnesses.

The Plaintiff, age 52, was wrongfully convicted, and has been wrongfully incarcerated, for twenty (20) years.

On October 1, 2004, after a Second Post-Conviction Relief Proceeding was held, presiding Judge Barry F. Feudale wrote a 120-page Opinion and Ordered Plaintiff's

convictions vacated and re-trial barred.[1] The Court ruled that the Defendants engaged in intentional, deliberate, egregious, patent, and on-going misconduct and prosecutorial misconduct. The Court stated:

> "At a minimum, the circumstances surrounding these homicides, and the subsequent events involving the principal cast of characters in this tragic drama lend themselves to the term extraordinary." *(Opinion, at page 7)*....
>
> ..."Was [Plaintiff's] a fundamentally unfair conviction? We find the answer to the question without any doubt or question. We rely on our findings of fact and conclusions of law to state without equivocation that

[1] Although the Commonwealth filed an appeal, and resolution of the appeal is pending, the filing of this Complaint at this time is proper per Heck vs. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), because Plaintiff's conviction has now been declared invalid by a State tribunal authorized to make such a determination.

Munchinski was wrongly convicted because of patent and ongoing prosecutorial misconduct involving the Constitution of the United States" *(p.108)*....

"Therefore, in a case such as this, involving deliberate and ongoing prosecutorial misconduct, at a minimum, automatic reversal and a new trial is proper. However, deliberate efforts of, as in this case, three different prosecutors, in two trials and one PCRA proceeding, to undermine the search for truth, clearly is in the category of offenses anathema to our most basic vision of the role of the Commonwealth in the criminal process" *(114)*...

..."[The intentional, deliberate, egregious, patent and ongoing misconduct] violated all principles of justice and fairness included in the Pennsylvania

Constitution's double jeopardy clause.."

"The [prosecutors] discredited [themselves]and the system of justice [they] took an oath to uphold." *(102-103).*

(See attached, Exhibit "A", the Order and 120 page Opinion, incorporated herein by reference as though set forth fully, including its' 157 Findings of Fact).

JURISDICTION:

AND NOW COMES David Joseph Munchinski, by and through his attorney, Noah Geary, Esquire, and pleads as follows:

1. This action arises under the Constitution of the United States of America, particularly the Fourth, Sixth, and Fourteenth Amendments to the Constitution of the United States of America, and under the laws of the United States of America, particularly the Civil Rights Act Title 42, U.S.C.§ 1983.

2. The jurisdiction of this court is invoked under the provisions of 28 U.S.C.A. §§ 1331 and 1343. The Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. Section 1367(a) to hear and adjudicate state law claims.

VENUE:

3. Venue is proper in this district because it is where all the parties reside and where the deprivations of the Plaintiff's constitutional and civil rights occurred.

PARTIES:

4. Plaintiff David Joseph Munchinski is an adult individual currently residing at P.O. Box 9999, Labelle, PA 15450 at the State Correctional Institute at Fayette County, Pennsylvania. At all times material, Munchinski was a resident of Westmoreland County, Allegheny County, and Fayette County, all within the Western District of Pennsylvania.

5. Defendant Gerald Solomon, individually, is an adult individual who at all times relevant acted as an individual and was a resident of Fayette County, Pennsylvania, located within the Western District.

6. Defendant Gerald Solomon, in his official capacity as District Attorney of Fayette County, Pennsylvania at

all times relevant was acting under color of law as the District Attorney of Fayette County, Pennsylvania, with an address of 61 East Main Street, Fayette County Courthouse, Uniontown, PA 15401.

7. Defendant Ralph Warman, individually, is an adult individual who at all times relevant, acted as an individual and was a resident of Fayette County, Pennsylvania, located within the Western District.

8. Defendant Ralph Warman, in his official capacities as First Assistant District Attorney and the District Attorney of Fayette County, Pennsylvania, at all times relevant was acting under color of law as the First Assistant District Attorney and the District Attorney of Fayette County, Pennsylvania, with an address of 61 East Main Street, Fayette County Courthouse.

9. Defendant John Kopas, individually, is an adult individual who at all times relevant acted as an

individual and was a resident of Fayette County, Pennsylvania, located within the Western District.

10. Defendant John Kopas, in his official capacity as First Assistant District Attorney of Fayette County, Pennsylvania, at all times relevant was acting under color of law as the First Assistant District Attorney with an address of 61 East Main Street, Fayette County Courthouse, located within the Western District.

11. Defendant George Fayouk, individually, is an adult individual who at all times relevant acted as an individual and was a resident of Fayette County, Pennsylvania, located within the Western District.

12. Defendant Humphrey Lukachik, individually, is an adult individual who at all times relevant acted as an individual and was a resident of Fayette County, Pennsylvania, located within the Western District.

13. Defendant Humphrey Lukachik, in his official capacity as Chief County Detective of Fayette County,

Pennsylvania, at all times relevant was acting under color of law as the Chief County Detective of Fayette County, Pennsylvania, with an address of 61 Main Street, Fayette County Courthouse.

14. Defendant Robert Mangiacarne, individually, is an adult individual who at all times relevant acted as an individual and was a resident of Fayette County, Pennsylvania, located within the Western District.

15. Defendant Robert Mangiacarne, in his official capacity as Chief County Detective of Fayette County, at all times relevant was acting under color of law as the Chief County Detective of Fayette County, with an address of 61 East Main Street, Fayette County.

16. All acts which resulted in the deprivation of Munchinski's constitutional rights were committed within the Western District, as set forth below.

COUNT I.
42 U.S.C. §1983 FEDERAL CIVIL RIGHTS VIOLATION: FALSE ARREST.
DAVID JOSEPH MUNCHINSKI VS. ALL DEFENDANTS.

17. Paragraphs 1-16 are hereby incorporated by reference as though set forth fully.

18. On September 9, 1982, one Richard Bowen, a career criminal facing three parole revocations, appeared in the Fayette County District Attorney's office and gave a statement regarding the murders to the Defendants, which was tape recorded for transcription.

19. The fact that the statement was tape recorded for transcription was memorialized in the official police report of the lead investigator, which report was approved the next day by his superior, who was also present when Bowen's statement was provided and tape recorded (Exhibit "2a.")

20. On October 21, 1982, Bowen returned to the Fayette County District Attorney's office and provided a

second statement in which he claimed to have been the get-away driver and eyewitness to the murders, which he alleged were committed by the Plaintiff, and one Leon Scaglione, now deceased.

21. The Defendants destroyed the tape-recorded statement which was provided by Bowen on September 9, 1982.

22. They then altered the original, approved police report of the lead investigator by removing the paragraph therein which memorialized that Bowen's statement was tape recorded for transcription.

23. They then concealed the removal of the paragraph by doctoring the report (Exhibit 2b").

24. On October 22, 1982, the Plaintiff, based on the statement provided to the Defendants by Richard Bowen on October 21, 1982, was arrested and charged, inter alia, with two counts of first-degree murder.

25. However, Plaintiff's arrest was not supported by probable cause.

26. Specifically, the Defendants were not free to ignore evidence which would dispel probable cause, and the fact that they destroyed the tape of Bowen's first statement, doctored the official, approved police report of the Pennsylvania State Police by removing the entire paragraph which referred to Bowen's first, tape-recorded statement, and then concealed the fact that they removed this paragraph proves that they dispelled whatever Bowen told them on September 9, 1982.

27. This proves that the Defendants did not act in good faith.

28. This proves that the Defendants did not have a reasonable belief that probable cause actually existed to arrest the Plaintiff – nor that it was objectively reasonable for the Defendants to believe they actually had probable cause to arrest the Plaintiff.

29. This proves that the Defendants did not and could not reasonably believe that what Bowen told them on October 21, 1982 was reliable and credible.

30. Additionally, the murders had been unsolved for five years.

31. Accordingly, the arrest constituted a false arrest.

32. As a direct and proximate result of the arrest which lacked probable cause, Plaintiff was seized, restrained and detained.

33. The above-described acts and conduct of each of the Defendants were done to deprive and did deprive Plaintiff of the rights guaranteed him under the United States Constitution, including but not limited to his Fourth Amendment right to be free from an arrest lacking in probable cause.

34. Plaintiff, as set forth below, was subsequently falsely imprisoned, prosecuted maliciously, wrongly convicted, and wrongfully incarcerated.

35. As a direct and proximate cause of the false arrest and subsequent unlawful detention, Plaintiff has suffered past, present and future pain, suffering, fear, anxiety, humiliation and embarrassment; the loss of liberty, unlawful confinement, property losses; past, present and future emotional trauma, physical and psychological harm; past, present and future medical expenses, past lost earnings and lost earning capacity; future loss of earnings and lost earning capacity; the loss of the enjoyment of life, and the separation from his children for over twenty (20) years.

36. The above-described actions of the Defendants were outrageous, were done willfully, with malice, and with reckless disregard of Plaintiff's federally-protected rights.

WHEREFORE, Plaintiff requests compensatory damages in an unspecified amount, punitive damages, as well as all investigative costs, litigation costs, court costs, reasonable attorney's fees for the time incurred in the

underlying Post-Conviction Relief Proceeding in the Court of Common Pleas of Fayette County upon which successful work this lawsuit was based, reasonable attorney's fees for all work in this action, and further, that this Honorable Court Order the Fayette County, Pennsylvania District Attorney's Office to undergo training regarding its obligations under Pennsylvania Rule of Criminal Procedure 573 and Brady vs. Maryland and its progeny, so that what was done to David Joseph Munchinski in this case is never done to another Fayette County, Pennsylvania criminal defendant, and any other relief which is appropriate.

COUNT II.
42 U.S.C. §1983 FEDERAL CIVIL RIGHTS VIOLATION: FALSE IMPRISONMENT. DAVID JOSEPH MUNCHINSKI VS. ALL DEFENDANTS.

38. Paragraphs 1-37 are hereby incorporated by reference as though set forth fully.

39. By engaging in the conduct set forth in the forgoing

paragraphs of this Complaint, the Defendants acted with the intent to confine the Plaintiff.

40. The Defendants' conduct, as set forth in those paragraphs, directly resulted in the Plaintiff's confinement.

41. The Plaintiff was at all times conscious of the confinement.

42. The conduct of each of the Defendants was done to deprive and did deprive Plaintiff of the rights guaranteed him under the United States Constitution, including but not limited to his 4th Amendment right to be free from being imprisoned when no probable cause existed to support the confinement.

43. As a direct and proximate cause of the false imprisonment, Plaintiff has suffered past, present and future pain, suffering, fear, anxiety, embarrassment; the loss of liberty, unlawful confinement, property losses,

past, present and future emotional trauma, physical and psychological harm; past, present and future medical expenses, past lost earnings and lost earning capacity; future loss of earnings and lost earning capacity; the loss of the enjoyment of life, and the separation from his children for over 20 years.

44. The above-described actions of the Defendants were outrageous, were done willfully, with malice, and with reckless disregard of Plaintiff's federally-protected rights.

WHEREFORE, Plaintiff requests compensatory damages in an unspecified amount, punitive damages, as well as all investigative costs, litigation costs, court costs, reasonable attorney's fees for the time incurred in the underlying Post-Conviction Relief Proceeding in the Court of Common Pleas of Fayette County upon which successful work this lawsuit was based, reasonable attorney's fees for all work in this action, and further, that this Honorable Court Order the Fayette County,

Pennsylvania District Attorney's Office to undergo training regarding its obligations under Pennsylvania Rule of Criminal Procedure 573 and Brady vs. Maryland and its progeny, so that what was done to David Joseph Munchinski in this case is never done to another Fayette County, Pennsylvania criminal defendant, and any other relief that this Court deems appropriate.

COUNT III.
FEDERAL CIVIL RIGHTS VIOLATIONS:
MALICIOUS PROSECUTION.
DAVID JOSEPH MUNCHINSKI VS. ALL DEFENDANTS

45. Paragraphs 1-44 are hereby incorporated by reference as though set forth fully.

46. The Defendants initiated a criminal process against Munchinski, specifically, by filing a Criminal Complaint and subsequent criminal information at Docket Numbers 755 and 755 and 1/3 in the Criminal Division of the Fayette County Court of Common Pleas, Pennsylvania

wherein Munchinski was charged with inter alia, two counts of first degree murder.

47. The criminal proceeding was terminated in his favor, and declared invalid by a state tribunal authorized to make such determination as reflected in Exhibit "A," the October 1, 2004 Order of Court of Post Conviction Relief Judge Barry F. Feudale, which Order and Opinion, including its 157 Findings of Fact, are hereby incorporated into this Complaint as though set forth fully.

48. As specified in Count I., there was a lack of probable cause to file charges against Munchinski.

49. The Defendants initiated the criminal proceeding either maliciously or for a purpose other than bringing the Plaintiff to justice, that purpose being to win at any cost, at the expense of and through the deprivation of the civil and constitutional rights of the Plaintiff.

50. Munchinski is actually innocent of all crimes with which he was charged and convicted.

51. The conduct of each of the Defendants was done to deprive and did deprive Plaintiff of the rights guaranteed him under the United States Constitution, including but not limited to his 4th Amendment right to be free from a prosecution which lacked probable cause.

52. As the direct and proximate cause of the malicious prosecution, Plaintiff has suffered past, present and future pain, suffering, fear, anxiety, embarrassment; the loss of liberty, unlawful confinement, property losses, past, present and future emotional trauma, physical and psychological harm; past, present and future medical expenses, past lost earnings and lost earning capacity; future loss of earnings and lost earning capacity; the loss of the enjoyment of life, and the separation from his children.

54. The above-described actions of Defendant were outrageous, were done willfully, with malice, and with reckless disregard of Plaintiff's federally-protected rights

WHEREFORE, Plaintiff requests compensatory damages in an unspecified amount, punitive damages, as well as all investigative costs, litigation costs, court costs, reasonable attorney's fees for the time incurred in the underlying Post-Conviction Relief Proceeding in the Court of Common Pleas of Fayette County upon which successful work this lawsuit was based, reasonable attorney's fees for all work in this action, and further, that this Honorable Court Order the Fayette County, Pennsylvania District Attorney's Office to undergo training regarding its obligations under Pennsylvania Rule of Criminal Procedure 573 and Brady vs. Maryland and its progeny, so that what was done to David Joseph Munchinski in this case is never done to another Fayette County, Pennsylvania criminal defendant, and any other relief that may be appropriate.

COUNT IV.
42 U.S.C. §1983 FEDERAL CIVIL RIGHTS VIOLATIONS:
ABUSE OF PROCESS.
DAVID JOSEPH MUNCHINSKI VS. ALL DEFENDANTS.

55. Paragraphs 1-54 are hereby incorporated by reference as though set forth fully.

56. As plead above, the Defendants commenced and continued a criminal proceeding against the Plaintiff.

57. The primary purpose and ulterior motive of the Defendants' use of the criminal process was to accomplish a purpose for which the process was not designed, that is, to obtain a conviction at any cost, specifically, at the expense of and through the deprivation of the constitutional rights, civil rights, and other rights of the Plaintiff.

58. This constituted a perversion and abuse of the criminal process.

59. As the direct and proximate result of this perversion and abuse of the process, Munchinski has suffered harm, specifically, at the time of the filing of this civil action, he has served twenty (20) years, wrongfully, in various State penitentiaries for crimes he did not commit.

60. The Plaintiff also suffered unlawful pre-trial detention.

61. The acts not authorized by the process, which were committed in furtherance of the aim to achieve a conviction at any costs, included but are not limited to the withholding of exculpatory, discoverable evidence, the intentional withholding of exculpatory, discoverable evidence, and the destruction of exculpatory, discoverable evidence as detailed in the Findings of Fact and throughout the 120 page Opinion and Order attached as Exhibit "A".

62. The conduct of each of the Defendants was done to deprive and did deprive Plaintiff of the rights guaranteed him under the United States Constitution, including but not limited to his 6th Amendment right to a fair trial.

63. As the direct and proximate cause of the abuse of process, Plaintiff has suffered past, present and future pain, suffering, fear, anxiety, embarrassment; the loss of liberty, unlawful confinement, property losses, past, present and future emotional trauma, physical and psychological harm; past, present and future medical expenses, past lost earnings and lost earning capacity; future loss of earnings and lost earning capacity; the loss of the enjoyment of life, and the separation from his children.

65. The above-described actions of Defendant were outrageous, were done willfully, with malice, and with reckless disregard of Plaintiff's federally-protected rights.

WHEREFORE, Plaintiff requests compensatory damages in an unspecified amount, punitive damages, as well as all investigative costs, litigation costs, court costs, reasonable attorney's fees for the time incurred in the underlying Post-Conviction Relief Proceeding in the Court of Common Pleas of Fayette County upon which successful work this lawsuit was based, reasonable attorney's fees for all work in this action, and further, that this Honorable Court Order the Fayette County, Pennsylvania District Attorney's Office to undergo training regarding its obligations under Pennsylvania Rule of Criminal Procedure 573 and Brady vs. Maryland and its progeny, so that what was done to David Joseph Munchinski in this case is never done to another Fayette County, Pennsylvania criminal defendant, and any other relief that is appropriate.

COUNT V.
42 U.S.C. §1983 FEDERAL CIVIL RIGHTS VIOLATIONS:
VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS TO A FAIR TRIAL AND 6TH AND 14TH AMENDMENT RIGHTS TO A FAIR TRIAL.
DAVID JOSEPH MUNCHINSKI VS. ALL DEFENDANTS.

66. Paragraphs 1-65 are hereby incorporated by reference as though set forth fully.

67. The original police report of lead investigator Montgomery Goodwin was intentionally withheld in the subsequent discovery process, along with eleven (11) other pieces of blatantly exculpatory evidence including a report which established alleged eyewitness Richard Bowen as being in Oklahoma on the night of the murders and not even in the State of Pennsylvania.

68. Ten other pieces of blatantly exculpatory evidence was intentionally withheld, which are set forth in Exhibit "A."

69. This was done prior to and during both the 1983 and 1986 jury trials.

70. Defendant Mangiacarne, the author of a police report establishing that one Mike Urdzik confessed with great specificity as to how and why he and another individual committed the murders, inter alia, personally participated in the withholding of exculpatory evidence.

71. In 1992, the Defendants once again, specifically Defendant John Kopas, Humphrey Lukachik, George Fayouck and Ralph Warman, intentionally withheld this information again, in spite of a Court Order directing the complete Pennsylvania State Police files to be provided to the Court.

72. In a subsequent Federal Habeas Corpus proceeding, the evidence was intentionally suppressed again.

73. In PCRA II, the Defendants all testified falsely in furtherance of the cover-up and conspiracy.

74. These acts and this conduct of each of the Defendants were done to deprive and did deprive Plaintiff of the rights guaranteed him under the United States Constitution, including but not limited to his 6th and 14th Amendment rights to a fair trial.

75. As the direct and proximate cause of the violation of Plaintiff's due process right and 6th Amendment right for a fair trial, Plaintiff has suffered past, present and future pain, suffering, fear, anxiety, embarrassment; the loss of liberty, unlawful confinement, property losses, past, present and future emotional trauma, physical and psychological harm; past, present and future medical expenses, past lost earnings and lost earning capacity; future loss of earnings and lost earning capacity; the loss of the enjoyment of life, and the separation from his children.

76. The above-described actions of Defendant were outrageous, were done willfully, with malice, and with reckless disregard of Plaintiff's federally-protected rights.

WHEREFORE, Plaintiff requests compensatory damages in an unspecified amount, punitive damages, as well as all investigative costs, litigation costs, court costs, reasonable attorney's fees for the time incurred in the underlying Post-Conviction Relief Proceeding in the Court of Common Pleas of Fayette County upon which successful work this lawsuit was based, reasonable attorney's fees for all work in this action, and further, that this Honorable Court Order the Fayette County, Pennsylvania District Attorney's Office to undergo training regarding its obligations under Pennsylvania Rule of Criminal Procedure 573 and Brady vs. Maryland and its progeny, so that what was done to David Joseph Munchinski in this case is never done to another Fayette

County, Pennsylvania criminal defendant, and any other relief that may be appropriate.

COUNT VI.
42 U.S.C. §1983 FEDERAL CIVIL RIGHTS VIOLATIONS:
CONSPIRACY TO DEPRIVE DAVID JOSEPH MUNCHINSKI OF HIS CIVIL RIGHTS IN VIOLATION OF § 1983.
DAVID JOSEPH MUNCHINSKI VS. ALL DEFENDANTS.

77. Paragraphs 1-76 are hereby incorporated by reference as though set forth fully.

78. The Defendants agreed to deprive Plaintiff of a fair trial in 1983, a fair trial in 1986, a fair Post-Conviction relief Proceeding in 1992-1993, a fair Federal Habeas Corpus Proceeding in the late 1990s and a fair Post-Conviction Relief Proceeding in 2003.

79. The Defendants conspired to falsely arrest, falsely imprison, maliciously prosecute the Plaintiff, conspired to commit abuse of process.

80. The Defendants conspired to conceal exculpatory evidence, destroy evidence, and withhold exculpatory evidence.

81. Pursuant to and in furtherance of the agreement, the Defendants both failed to act as well as acted to achieve the object of their conspiracy.

82. The agreement actually violated the Constitutional rights of the Plaintiff.

83. The acts committed in furtherance of the conspiracy include but are not limited to the following acts described in paragraphs 67-72 of this Complaint, which are hereby incorporated herein as though set forth fully in this Count as well as all Findings of Fact in Exhibit "A."

84. The herein-described acts and conduct of the Defendants, and each of them, were done to deprive and did deprive Plaintiff of the right(s), guaranteed him under

the United States Constitution, including but not limited to his 4th, 6th and 14th Amendment rights.

85. As the direct and proximate cause of the abuse of process, Plaintiff has suffered past, present and future pain, suffering, fear, anxiety, embarrassment; the loss of liberty, unlawful confinement, property losses, past, present and future emotional trauma, physical and psychological harm; past, present and future medical expenses, past lost earnings and lost earning capacity; future loss of earnings and lost earning capacity; the loss of the enjoyment of life, and the separation from his children.

86. The above-described actions of Defendant were outrageous, were done willfully, with malice, and with reckless disregard of Plaintiff's federally-protected rights.

WHEREFORE, Plaintiff requests compensatory damages in an unspecified amount, punitive damages, as well as all investigative costs, litigation costs, court costs,

reasonable attorney's fees for the time incurred in the underlying Post-Conviction Relief Proceeding in the Court of Common Pleas of Fayette County upon which successful work this lawsuit was based, reasonable attorney's fees for all work in this action, and further, that this Honorable Court Order the Fayette County, Pennsylvania District Attorney's Office to undergo training regarding its obligations under Pennsylvania Rule of Criminal Procedure 573 and Brady vs. Maryland and its progeny, so that what was done to David Joseph Munchinski in this case is never done to another Fayette County, Pennsylvania criminal defendant, and any other relief that is appropriate.

COUNT VII.
PENDENT STATE TORT CLAIMS.

87. All forgoing paragraphs are incorporated herein as though set forth fully.

88. The acts and conduct of the Defendants, as described above, constituted false arrest, false imprisonment, malicious prosecution, and abuse of process under the laws of Pennsylvania, and this Court has supplemental jurisdiction to hear and adjudicate these claims.

89. The above-described actions of the Defendants were outrageous, were done willfully, with malice, and with reckless disregard of Plaintiff's rights.

WHEREFORE, Plaintiff requests compensatory damages in an unspecified amount, punitive damages, as well as all investigative costs, litigation costs, court costs, and any other relief that this Honorable Court deems appropriate.

COUNT VIII.
MUNICIPAL LIABILITY:
DAVID JOSEPH MUNCHINSKI VS. ALL DEFENDANTS
NAMED IN THEIR OFFICAL CAPACITIES.

90. Paragraphs 1-89 are hereby incorporated by reference as though set forth fully.

91. Fayette County, Pennsylvania is liable for the constitutional deprivations suffered by the Plaintiff for any and every of the following reasons.

92. As set forth below, the policymakers were personally involved in the violation of Plaintiff's civil rights in including but not limited to the following manners:

a. actually and personally committing the acts which were the direct and proximate cause of the deprivations of Plaintiff's constitutional rights;

b. creating custom or policy;

c. condoning unconstitutional conduct;

d. consciously ignoring unconstitutional conduct;

e. acquiescing in unconstitutional conduct.

93. Gerald Solomon, District Attorney of Fayette County, was the policymaker in Fayette County, Pennsylvania on how the District Attorney's office was to handle its Brady obligations.

94. Solomon himself intentionally withheld the "Bates Report," which was specifically requested in discovery.

95. First Assistant District Attorney Ralph Warman doctored the police report of September 9, 1982 to conceal the destruction of the tape.

96. The Defendants, Solomon and Warman, in their official capacities, not only personally engaged in misconduct which violated Plaintiff's constitutional and civil rights, they had a custom and/or practice and/or policy of withholding exculpatory, discoverable evidence from criminal defendants.

97. These policymakers adopted a deliberate policy and practice of withholding exculpatory evidence from criminal defendants.

98. In 1981, the year prior to Plaintiff's arrest, a first degree murder conviction was reversed when it was discovered that District Attorney Solomon and First Assistant Warman withheld exculpatory evidence from a Defendant.

99. In 1982, just a month prior to Plaintiff's arrest, another first degree murder conviction was reversed when it was discovered that District Attorney Solomon and First Assistant Warman withheld exculpatory evidence from a Defendant.

100. Solomon, as District Attorney, had knowledge of and approved of Warman's altering of the September 9, 1982 police report.

101. The Defendants also acted with deliberate, reckless and/or callous indifference to the constitutional rights of Plaintiff.

102. The Defendants inaction amounted to deliberate, reckless and/or callous indifference to the constitutional rights of Plaintiff.

103. Through its' officials policy, practice and custom of withholding exculpatory evidence from criminal defendants, Fayette County, Pennsylvania was the moving force behind the deprivation of the constitutional and civil rights of Munchinski.

WHEREFORE, the Plaintiff requests that Fayette County, Pennsylvania and that the Defendants be held liable in their official capacities for the acts/omissions committed as set forth throughout this Complaint.

JURY TRIAL DEMANDED.

Respectfully submitted,

/s/ Noah Geary

Noah Geary, Esquire
Suite 225
Washington Trust Building
Washington, PA 15301
724 222-3788
PA ID 78382

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Plaintiff's Complaint was served upon the following parties, via personal service, on this 12th day of August, 2005:

Gerald Solomon, Fayette County Courthouse
61 East Main Street, Uniontown, PA

Ralph Warman, Fayette County Courthouse
61 East Main Street, Uniontown, PA

John Kopas, Esquire
Law Office of John Kopas
75 W. Church Street
Fairchance, PA

George Fayouck
164 Stockton Avenue
Uniontown, PA

Humphrey Lukachik
110 Meadowview Court
Uniontown, PA

Robert Mangiacarne
303 Nina Circle
Uniontown, PA

August 12, 2005

/s/ Noah Geary
Noah Geary, Esquire

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

DAVID JOSEPH MUNCHINSKI,	)
	)2:05cv01125
Plaintiff,	)Electronic
	)Filing
v.	)
	)
GERALD SOLOMON, in his individual capacity as District Attorney of Fayette County, Pennsylvania; RALPH WARMAN, in his individual capacity and in his official capacities as District Attorneyand First Assistant District Attorneyof Fayette County, Pennsylvania; JOHN A. KOPAS, III, in his individual capacity and in his official capacity as First Assistant District Attorney of Fayette County, Pennsylvania; HUMPHREY LUKACHIK, in his individual capacity and in his official capacityas Chief County Detective, Fayette County, Pennsylvania; GEORGE FAYOCK, in his individual capacity;and ROBERT MANGIACARNE, in his individual capacity and in his official capacity as Chief County Detective, Fayette County, Pennsylvania,	)
	)
Defendants.	)

MEMORANDUM OPINION

August 16, 2006

I. INTRODUCTION

In December 1977, two men in Fayette County, Pennsylvania were anally raped and shot to death. Plaintiff was arrested, charged, and stood trial for these crimes. The jury could not reach a verdict at Plaintiff's first trial, but he was convicted upon re-trial in 1986. After nearly two decades of post-conviction proceedings, however, his conviction was overturned by Senior Judge Barry F. Feudale of the Court of Common Pleas in a 120-page Order filed on October 1, 2004. ("Order"). Succinctly, Judge Feudale found that prosecutorial misconduct, including the intentional withholding of material that should have been disclosed under Brady v. Maryland, 373 U.S. 83 (1963), had deprived Plaintiff of a fair trial.

On the strength of the Order, Plaintiff commenced this action in the United States District Court for the Western District of Pennsylvania on August 12, 2005, under 42 U.S.C. § 1983 ("§ 1983"), seeking redress for personal injury allegedly arising from the violation of his civil rights under the Fourth, Sixth, and Fourteenth Amendments to the United

States Constitution. In essence, Plaintiff alleges that he was railroaded in contravention of rights guaranteed him by the United States Constitution. More specifically, Plaintiff sues all Defendants under 42 U.S.C. § 1983 on theories of false arrest (Count I), false imprisonment (Count II), malicious prosecution (Count III), abuse of process (Count IV), deprivations of his Sixth and Fourteenth Amendment rights to a fair trial (Count V), and conspiracy to violate his civil rights (Count VI). Additionally, Plaintiff asserts pendent state tort claims of false arrest, false imprisonment, malicious prosecution, and abuse of process (Count VII), and alleges municipal liability (Count VIII) for all of the aforementioned torts.

Presently before the Court are three motions to dismiss brought by Defendants George Fayock, Robert Mangiacarne, Humphrey Lukachik, John A Kopas, III, Gerald Solomon, and Ralph Warman (collectively, "Defendants"). The first motion was filed by Defendants Fayock and Mangiacarne ("Fayock Motion") on September 6, 2005. These Defendants argue that: (1) Counts III, V, VI, and VII of the Complaint must be dismissed pursuant to *Heck p.*

Humphrey, 512 U.S. 477 (1994); (2) Counts I, II, and IV are time-barred; and, (3) these Defendants are not "persons" amenable to suit under Count VIII. In a separate Motion filed on September 14, 2005, Defendant Lukachik joins the motion filed by Defendants Fayock and Mangiacarne, and further alleges that he has not been served with the Complaint. ("Lukachik Motion"). Finally, on November 11, 2005, Defendants Warman, Solomon, and Kopas filed a separate motion to dismiss ("Warman Motion") echoing the substantive arguments raised in the motion filed by Defendants Fayock and Mangiacarne. Additionally, these three Defendants move to strike various portions of the Complaint pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.[1] Each of these groups of Defendants has filed an accompanying Brief in Support of the arguments submitted in the various motions. ("Fayock Brief" and "Warman Brief," respeetively).[2]

In response to these three motions, Plaintiff filed a document captioned "Plaintiff's Answer to Defendants' Motion to Dismiss" on October 10, 2005. ("Plaintiff's Answer"). In Plaintiff's Answer, he generally opposes

the substantive arguments raised by Defendants in their respective motions and briefs, and additionally requests "leave to conduct the deposition of a witness for the Plaintiff who is in grave health." (See Plaintiff's Answer at 3). On that same date, Plaintiff filed a separate document captioned "Plaintiff s Brief in Opposition to Defendants' Motions to Dismiss." ("Plaintiff's Brief'). Defendants Fayock, Mangiacarne, and Lukachik timely filed one Reply Brief ("Fayock Reply"); Defendants Warman, Solomon, and Kopas filed another. ("Warman Reply"). On December 22, 2005, Plaintiff filed a document captioned "Plaintiffs Brief in Response to Defendants' Reply Briefs." ("Plaintiff's Reply").

Finally, on December 22, 2005, the Warman Defendants filed a "Supplemental Reply Brief' in support of their motion to dismiss. ("Warman Supp.

[1]On October 24, 2005, Defendant Kopas filed a document captioned "Supplemental Motion to Dismiss" (hereinafter, "Kopas Supp. Motion"), in which he asserted absolute immunity to all of the Counts pleaded in the Complaint.

[2]Although Defendant Lukachik filed a separate motion to dismiss, he and Defendants Fayock and Mangiacarne filed a single Brief in Support.

Reply"). In that brief, these Defendants informed the Court that, on December 14, 2005, a three judge panel of the Superior Court of Pennsylvania had issued a 119-page Memorandum Opinion reversing the Order, and reinstating Plaintiff's conviction. (See Warman Supp. Reply at 2-3; see also Exh. A to Warman Supp. Reply). On December 23, 2005, the Fayock Defendants filed their own "Supplemental Reply Brief," in which they joined the Warman Supplemental Reply Brief. This matter is now fully briefed and is ready for decision. For the reasons set forth below, the motions will be granted.

II. LEGAL STANDARD FOR MOTION TO DISMISS

It is well settled that, in reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), "[t]he applicable standard of review requires the court to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party." *Rocks v. City of Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989). Dismissal of a complaint is proper only where "it appears beyond doubt that the

plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957); *Langford v. City of Atlantic City,* 235 F.3d 845, 847 (3d Cir. 2000)(citing *Nami v. Fauver,* 82 F.3d 63, 65 (3d Cir. 1996)). The question is not whether the plaintiff will ultimately prevail; instead, it is whether the plaintiff can prove any set of facts consistent with the averments of the complaint which would show the plaintiff is entitled to relief. *Jordan v. Fox, Rothschild, O'Brien & Frankel,* 20 F.3d 1250, 1261 (3d Ch. 1994). Under this standard, a complaint will be deemed sufficient if it adequately puts the defendant on notice of the essential elements of a cause of action. *Nami v. Fauver,* 82 F.3d at 66.

III. DISCUSSION

All of the Defendants argue that *Heck v. Humphrey,* 512 U.S. 477 (1994), requires dismissal of several counts of the Complaint — namely, Count 111 (malicious prosecution), Count V (deprivation of due process and a fair trial), and Count VI (conspiracy)[3] In addition, Defendants claim that Plaintiff's municipal liability

allegations in Count VIII fail to state a claim under Rule 12(b)(6). Finally, Defendants contend that Counts I, II, IV, and VII (which set forth theories of false arrest under § 1983, false imprisonment under § 1983, abuse of process under § 1983, and Plaintiff's state law claims, respectively) are barred by the applicable statutes of limitations.

The Court will address each of Defendants' arguments, albeit in a slightly different order than they have briefed them. As explained below, the Court concludes that there has been no "favorable determination" of Counts HI, V, VI, and — to the extent it is predicated on a theory of malicious prosecution Count VII within the meaning of *Heck*. In addition, the Court finds Plaintiff's municipal liability claim in Count VIII is not properly pleaded against any of the Defendants. Finally, the Court is convinced that Plaintiff's remaining claims are barred by the statutes of limitations Defendants' motions must

[3] In addition, Defendants Fayock, Mangiacarne, and Lukachik argue that all of the other Counts "should be dismissed as premature under Heck." (See Fayock Brief at 10). For the reasons discussed below, the Court rejects this contention.

be granted, and the matter dismissed.

A. Counts III and V are Barred by Heck, as are Counts VI, VII and VIII to the Extent they Rely on Theories of Malicious Prosecution or Deprivation of Plaintiff's Rights to Due Process or a Fair Trial

Defendants argue that several of Plaintiff's claims are not justiciable until he obtains a favorable, final termination of the criminal proceedings against him. *(See* Warman Brief at 3-9; *see also* Fayock Brief at 4-8). For his part, Plaintiff contends that none of his claims are *Heck*- barred, pointing to Judge Feudale's 2004 Order vacating his conviction. (Plaintiff's Brief at 23). After reviewing the Complaint in light *of Heck,* the Court agrees that some of Plaintiff's claims are premature.

In *Heck v. Humphrey,* the Supreme Court held that an action seeking "damages for allegedly unconstitutional [...] imprisonment" is not cognizable under § 1983 unless "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such

determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey,* 512 U.S. at 486-87. "In other words, if a judgment in [a] plaintiffs favor implies the invalidity of his or her conviction or imprisonment, [the] plaintiff must show that the conviction or sentence was reversed *or in some way declared invalid by an authorized tribunal." Bush v. City of Philadelphia,* 367 F.Supp.2d 722, 727 (E.D. Pa. 2005) (emphasis added). "The plaintiff bears the burden of showing that his claims are not barred by *Heck." See Battle v. Marquardt,* No, Civ.A. 03-1062, 2006 WL 1073068, at * 2 n.1, (W.D. Pa. Apr. 21, 2006) (citation omitted). Whether a proceeding has terminated in Plaintiff's favor is a question of fact for the Court. *See Brandley v. Keeshan,* 64 17.3d 196, 199 (5th Cir.1995).

The parties appear to agree that a judgment in Plaintiff's favor on at least some of his § 1983 claims necessarily will imply the invalidity of his conviction. Thus, Plaintiff is required

to plead that his conviction has been "in some way declared invalid by an authorized tribunal." *Bush v. City of Philadelphia,* 367 F.Supp.2d at 727. Plaintiff has satisfied that requirement by pleading that his conviction was vacated by the Judge Feudale of the Court of Common Pleas of Fayette County, Pennsylvania. *(See* Complaint at 2-3). The record supports this pleading. *(See* Complaint, Exh. A). The parties do not dispute that the Court of Common Pleas was "a state tribunal authorized to make such determination" within the meaning of *Heck.*

Although Defendants do not dispute that the Order vacating Plaintiff's conviction was "favorable" under any definition of the word, they insist that the Order did not represent a "termination" of the proceedings. Specifically, Defendants Solomon, Warman, and Kopas argue that the Court of Common Pleas' October 1, 2004, decision vacating Plaintiffs' conviction should not be considered a

"favorable termination" because that decision is not final but is, instead, pending resolution on appeal. *(See* Warman Motion at 7-8). Plaintiff disagrees because, as he reads the 2004 opinion, Judge Feudale ordered Plaintiff's conviction "vacated and re-trial barred."[4] *(See* Opposition at 2-3; *see also* Complaint at 2-3). At the heart of this dispute is a question whose resolution is critical to the disposition of all of Defendants' motions: when does a Court's order become a "favorable termination" within the meaning of *Heck?*

At first blush, Judge Feudale's Order overturning Plaintiff's conviction would appear to satisfy *Heck's*

4 The Court notes that Plaintiff's interpretation of this aspect of the 2004 Order is overly-generous. Although Judge Feudale condemned the conduct of Defendants Warman, Kopas, and Solomon in ringing terms — he did not "bar" re-trial of Plaintiff unconditionally. Instead, his Order actually granted Plaintiff's request for new trial, but made re-trial contingent upon Defendants providing Plaintiff with a copy of a tape-recorded statement made by a star prosecution witness, which statement never had been turned over to Plaintiff. (See Complaint, Exh. A at 1-2). Only in the event that Defendants failed to relinquish this evidence would re-trial be barred. *(See* Complaint, Exh. A at 2). Thus, if Plaintiff is not re-tried, it will only be because the State's decision not to relinquish the specified discovery was tantamount to a *nolle prosequi*, and not because re-trial was "barred" by the Order.

expansive definition of a "favorable termination" of the proceedings. Plaintiff's convictions were, after all, "declared invalid by a state tribunal authorized to make such determination.." *See Heck,* 512 U.S. at 486-87, However, a careful reading of Judge Feudale's Order confirms that it *vacated* — rather than *reversed* — Plaintiffs conviction and granted his motion for a new trial. *(See* Complaint, Exh. A at 1-2). The impact of his choice of words makes a difference. As another district court in our circuit has observed:

> [I]t is clear [...] that in order to maintain a § 1983 claim for an unconstitutional conviction or imprisonment where success on such a claim would necessarily imply the invalidity of an outstanding or potential conviction, there must first be a "final" termination of the criminal proceeding in favor of the plaintiff. [....] [T]o require finality is entirely consistent with *Heck* despite the language therein suggesting that a "reversal" serves as a favorable termination. By using the term "reversal," the Supreme Court could not have intended to establish a bright-line rule whereby *any* reversal of a criminal conviction acts as a favorable determination. Clearly, some "reversals" connote "finality," while others do not. [....] Traditionally, setting aside a conviction and remanding for retrial was

> termed a 'vacation' of the conviction; 'reversal' of a conviction meant no retrial was permitted. In this context, the Supreme Court's use of the tem. 'reversal' is appropriate to signify the termination of criminal proceedings. As courts have come to use these terms without regard to this distinction, however, we take this opportunity to make clear that by 'reversal' we mean without the possibility for retrial. When retrial is not an option, reversal is a termination of the prosecution.

Michaels v. New Jersey, 955 F.Supp. 315, 324-25 (D. N.J. 1996) (citations and footnotes omitted) (emphasis in original) (quoting *Kelly v. Serna*, 87 F.3d 1235, 1240 n.3 (11th Cir. 1996). Given that the 2004 Order merely vacated Plaintiffs conviction and offered the prosecution the option of re-trying him, it is clear that the Order — although undeniably "favorable" to Plaintiff— does not represent a "termination" of the proceedings.

The fact that Judge Feudale's Order currently is on appeal (and already has been reversed by the Superior Court) only reinforces

this conclusion. Although one court has held that a criminal defendant may initiate a § 1983 suit even if he has been granted nothing more "final" than a new trial,[5] our circuit has held that a § 1983 cause of action accrues only when the conviction is dismissed outright without an order for a retrial. *See Smith v. Holtz,* 87 F.3d 108 (3d Cir.1996) (stating that a § 1983 cause of action accrues for statute-of-limitation purposes when the conviction is dismissed outright, not when it is reversed and remanded for a new trial). The other circuits to have reached this issue agree with the Third Circuit.[6] All that remains is for the Court to determine which of Plaintiff's claims is Heck-barred, and which are not.

After reviewing the Complaint and the applicable law, the Court concludes that Plaintiff's claims are premature under *Heck* to the extent that his causes of action articulate theories of malicious prosecution[7] and violations of his rights to due process

or a fair trial.[8] Additionally, the Court concludes that Plaintiff's state law claims — again, insofar as they depend upon theories of the aforementioned malicious prosecution and due process violations — as well as his causes of action for conspiracy[9] and municipal

5 *See Davis v. Zain,* 79 F.3d 18 (5th Cir. 1996) (finding that a plaintiff whose conviction for murder was overturned on the grounds of prosecutorial misconduct and subornation of perjury could bring a § 1983 claim despite *Heck,* even though he faced re-trial on the murder charge)

6 See Covington v. City ofNew York, *171 F.3d 117 (2d Cir.1999) (ruling that §* 1983 claim would not accrue for purposes of statute of limitations until the criminal charge was actually dismissed); *Shamaeizadeh v. Cunigan,* 182 F.3d 391 (6th Cir.1999) (same); *Washington v. Summerville,* 127 F.3d 552 (7th Cir.1997) (holding that a *;toile prosequi* was not a final termination for purposes of malicious prosecution); *Harvey v. Waldron,* 210 F.3d 1008 (9th Cir.2000) (stating that *Heck* applies to both actual and potential convictions in the context of accrual of cause of action); *Beck v. City of Muskogee Police Dept.,* 195 F.3d 553 (10th Cir.1999) (same); *Uboh v. Reno,* 141 F.3d 1000 (11th Cir.1998) (holding that *Bivens* claim accrued after the dismissal of the criminal claims).

7 See Donahue v. Gavin, *280 F.3d 371, 383-84 (3d Cir. 2002) (holding that, where a* defendant's conviction was reversed and remanded for a new trial, the prosecutor's decision not to re-try him was not a "favorable termination" and, thus, his § 1983 malicious prosecution claim was barred

liability[10] also are barred by *Heck*. Thus, until Plaintiff obtains *a final* favorable termination of the proceedings, Counts and V are premature. To the degree that Counts VI, VII, and VIII rely on theories of malicious prosecution and due process or fair trial violations, they, too, are Heck-barred.

by *Heck*).

[8] See Holtz, *87 F.3d at 112 (holding that a plaintiff's claims that defendants* suppressed exculpatory evidence and contrived inculpatory evidence in violation of his due process rights were Heck-barred); *see also Gravely v. Speranza*, 408 F.Supp.2d 185, 189 (D. N.J. 2006) (holding that a § 1983 action by a plaintiff who alleged that he was deprived of a fair trial because of a *Brady* violation "would necessarily imply the invalidity of his conviction or sentence, and thus is barred by *Heck*"); *Tedford v. Hepting*, 990 F.2d 745, 749 (3d Cir.1993) (holding that, where a § 1983 plaintiff sought a declaration that his constitutional rights on appeal were violated as a result of falsification of transcripts, his civil rights suit was "a direct challenge to the validity of his conviction and the legality of this] confinement" and thus, was not justiciable "absent a successful challenge to the underlying conviction.").

[9] *See Rashid v. Monteverde & Hemphill*, No. CIV. A. 95-2449, 1997 WL 360922, *7 (E.D. Pa. June 24, 1997), *aff'd*, 149 F.3d 1165 (3d Cir.1998) (holding that a § 1983 claim that a public defender conspired with federal agents during course of the plaintiff's criminal trial to deprive him of constitutional rights

It bears emphasis, however, that *Heck* does not serve as a complete bar to all civil rights claims related to an arrest. *See Nelson v. Jashurek,* 109 F.3d 142 (3d Cir.1997). To the extent that some claims do not necessarily imply the invalidity of the conviction, "the action should be allowed to proceed, in the absence of some other bar to the suit." *Heck,* 512 U.S. at 487 n.7. Some of the Defendants have conceded that the Complaint contains some theories of recovery which do not imply the invalidity of Plaintiffs conviction and which, for that reason, are not Heck-barred. *(See* Warman Brief at 8-9; *cf.* Fayock Brief at 10 (asserting the statutes of limitations but arguing in the alternative that *all* of Plaintiff's claims are Heck-barred)), Accordingly, the Court finds that Count I (false arrest), Count II (false imprisonment), Count IV (abuse of process), Count VI (to the extent that it is predicated on the theory that defendants conspired to have him falsely arrested, falsely imprisoned, and engage in an abuse of process), Count VII (insofar as

it articulates state-law claims on theories of false arrest, false imprisonment, and abuse of process), and inasmuch as it is not predicated on one of the aforementioned theories — Count VIII (municipal liability) are unaffected by *Heck*.[11]

was barred by *Heck); see also Rose,* 871 F.2d at 352 (holding that a claim for conspiracy to maliciously prosecute under § 1983 cannot accrue until termination of the proceedings in the plaintiff's favor)

10 See Robinson v. Lather, No. 04 C 2382, 2006 WL 418664 at *5 (N.D. Ill. Feb 15, 2006) (finding a plaintiff's municipal liability claims based on a theory of excessive force to be barred by Heck because "these claims depend, in the first instance, on the plaintiff establishing that excessive force" was used by the arresting officer).

11 See Gibson v. Superintendent of New Jersey Dep't of Law and Pub. Safety, 411 F.3d 427, (3d Cir. 2005) (holding that false arrest and false imprisonment claims are not Heck- barred because they accrue at the time of the arrest); see also Heck, 512 U.S. at 486 n. 5 (noting that favorable termination of prior proceedings is not an element of a cause of action for abuse of process); Jones v. Haga, No. 05-cv-02268-PSF-CBS, 2006 WL 2038006, at *5 n.3 (D.Colo. July 17, 2006) (observing that Heck would not bar municipal liability claims that did not imply the invalidity of a prisoner's conviction or sentence); Gravely, 408 F.Supp.2d at 189 (same).

B. Counts I, II, IV, and the Non-Heck-Barred Allegations of Counts VI, VII, and VIII are Barred by the Applicable Statutes of Limitation

Next, Defendants assert that the applicable statute of limitations bar adjudication of all of Plaintiff's remaining claims. *(See* Warman Brief at 9-16; *see also* Fayock Brief at 3-10). Plaintiff, on the other hand, insists that the doctrine of equitable estoppel precludes Defendants from invoking the statute of limitations. *(See* Plaintiff's Brief at 3-6). After reviewing the pleadings, the Court agrees with Defendants.

Although Congress did not provide a specific federal statute of limitations in the Civil Rights Act, federal courts apply the forum state's statute of limitations for personal injury to actions brought pursuant to § 1983. *Sameric Corp. of Delaware, Inc. v. City of Philadelphia*, 142 F.3d 582, 599 (3d Cir. 1998). In this case, that statute of limitations required Plaintiff to bring his claims of false arrest, false imprisonment and abuse of process within two years of their accrual. *See Smith v. City of Pittsburgh*, 764 F.2d 188, 194 (3d Cir. 1985); *see also* 42 Pa.C.S.A. § 5524. Insofar as Plaintiff's conspiracy claim (in Count

VII) is predicated on any of those three theories, it, too, is governed by the two-year statute of limitations. *See Pierce v. Montgomery County Opportunity Bd., Inc.*, 884 F.Supp. 965, 967-77 (E.D. Pa. 1995) (applying Pennsylvania's two-year statute of limitations to conspiracy claim brought under § 1983).

False arrest and false imprisonment claims accrue at the time of arrest, *See Montgomery v. De Simone,* 159 F.3d 120, 126 (3d Cir.1998). Abuse of process claims also accrue at the time of arrest. *See Rose,* 871 F.2d at 350. Plaintiff alleges that he was arrested in October 1982. *(See* Complaint at 2). Thus, his claims of false arrest, false imprisonment, and abuse of process are all time-barred. The statute of limitations for civil rights conspiracy claims asserted pursuant to § 1983 runs from the date of each overt action. *See Ammlung v. City of Chester,* 494 F.2d 811, 814-15 (3d Cir.1974). Here, the overt acts that Plaintiff alleges span the entire proceeding — from before his first trial in 1983 to their alleged plot to deprive him of a "fair Post-Conviction Relief Proceeding in 2003." *(See* Complaint at 15-16). To the extent Plaintiff's conspiracy claim is predicated on the theory

that Defendants "conspired to falsely arrest, falsely imprison, [... and] commit abuse of process," *(see* Complaint at 16, ¶ 79),those claims accrued before the date of Plaintiff's first trial in 1983, at the very latest. Accordingly, they are barred by the running of the two-year statutes of limitations for those underlying causes of action.[12]

Plaintiff insists, however, that the doctrine of equitable estoppel bars Defendants from raising a statute-of-limitations defense. *(See* Plaintiffs Brief at 3-6). More specifically, Plaintiff maintains that Defendants' alleged suppression of a dozen pieces of evidence for nearly twenty years prevented him from bringing these claims sooner. *(See* Plaintiff's Brief at 3-4). After reviewing the pleadings, the Court agrees with Defendants' contention that equitable estoppel is inapplicable in these circumstances. Notwithstanding that state law provides the statute of limitations, federal law controls the date of accrual of a § 1983 action, which is generally when the plaintiff first knows or has reason to know of the

underlying injury giving rise to his cause of action. *See Deal) v. Three Un-Named Police Officers,* 746 F.2d 185, 197 n.16 (3d Cir.1984). Pennsylvania law is identical on this issue. *See Doe v. Kohn, Nast & Graf,* P.C., 866 F.Supp. 190 (E.D. Pa.1994) (noting that Pennsylvania's "discovery rule" likewise provides that the statute of limitations does not begin to run until the plaintiff has discovered his injury or, in the exercise of reasonable diligence, should have discovered his injury) (quoting *Pocono International Raceway v. Pocono Produce,* 503 Pa. 80, 85, 468 A.2d 468, 471 (1983)). "A court may equitably estop a defendant from asserting a statute of limitations defense if the defendant engaged in 'fraud, misrepresentation or deception' which prevented plaintiff from filing a timely action." *Muhl v. Tiber Holding Corp.,* 18 F.Supp.2d 514, 519 (E.D. Pa. 1998) (citation omitted). The burden of proving reliance-inducing fraud, misrepresentation, or deception lies with the plaintiff. *See Visor Builders, Inc. v. Devon E. Tranter, Inc.,* 470 F.Supp. 911 (M.D. Pa.1970).In this

case, the basis of Plaintiff's claim of equitable estoppel is that Defendants withheld 12 pieces of exculpatory evidence for two decades. *(See* Plaintiff's Brief at 3). However, Plaintiff's admission that he "obtained himself" all of this same evidence "through various means in 2001" is fatal to his equitable-estoppel argument. (Plaintiff's Brief at 4). Even if the Court were to apply the doctrine of equitable estoppel, then, by Plaintiff's own admission the clock began running on these claims when he finally discovered this evidence in 2001. Because Plaintiff did not file this Complaint until August 2005, these claims are clearly too late.

In sum, the claims Plaintiff has pleaded in Counts I, II, IV, as well as his theories of false arrest, false imprisonment, and abuse of process in Counts W, VII, and VIII are time- barred. Even if the Court were inclined to apply equitable estoppel, by Plaintiff's own admission each of these

[12]As noted above, to the extent that Plaintiff alleges a conspiracy to maliciously prosecute him, withhold *Brady* material, and obstruct post-conviction proceedings, Count VI is Heck-barred because these theories necessarily would imply the invalidity of his conviction.

claims is between one and two years too late. Accordingly, these claims must be dismissed.

C. To the Extent it is not Barred By Heck *or the Statute of Limitations, Plaintiff's Municipal Liability Claim in Count VIII Must be Dismissed for Failure to State a Claim*

Defendants next argue that Plaintiff's municipal liability allegations in Count VIII fails to state a claim because Plaintiff has not adequately pleaded that any of the Defendants was a policy-maker through whom liability could attach under *Monell* v. *Department of Social Services,* 436 U.S. 658 (1978). *(See* Warman Brief at 17-20). The Court agrees with Defendants.

A § 1983 action brought against a person in his or her official capacity "generally represent[s] only another way of pleading an action against an entity of which an officer is an agent." *Molten,* 436 U.S. at 690 n. 55. Municipal liability may be based on a single decision by an individual with "policy making authority

rendering his or her behavior an act of official government policy." *McGreevy v. Stroup, 413* F.3d 359, 367 (3d Cir. 2005) (citing *Pembaur v. City of Cincinnati, 475 U.S. 469,480-81* (1986)), Identifying "policy-makers" in this sense is a question of state law. *See Andrews v. City of Philadelphia, 895* F.2d 1469, 1481 (3d Cir.1990) (citing *City of St. Louis v. Praprotnik, 485* U.S. 112, 124 (1988)).

In Count VIII, Plaintiff specifically alleges that, as District Attorney, Defendant Solomon "was the policymaker in Fayette County, Pennsylvania on how the District Attorney's Office was to handle its Brady obligations." (Complaint at 18, ¶93). Plaintiff further alleges that Defendants Solomon and Warman together "adopted a deliberate policy and practice of withholding exculpatory evidence from criminal defendants," (Complaint at 18, ¶97). On the strength of these allegations, Plaintiff ultimately insists that, "Rjhrough its' official policy, practice, and custom of withholding exculpatory evidence from criminal

defendants, Fayette County, Pennsylvania was the moving force behind the deprivation" of his constitutional rights. (Complaint at 19, ¶ 103).

Defendants argue, however, that Plaintiff's mere allegation that some of them were policy-makers is insufficient to survive a motion to dismiss because "whether their asserted policy-making was on behalf of the county or the Commonwealth is a question of law, and the allegations of policy-making are not merely the manner in which the office of the prosecutor was to be operated, but, rather, how the laws of the Commonwealth were to be enforced." *(See* Warman Reply at 17). "[W]hen determining municipal liability, one question which must be addressed is whether the alleged tortfeasor is a policymaker for the State or for the named county." *Reitz v. County of Bucks,* 125 F.3d 139, 146 n.2 (3d Cir. 1997). "Accordingly, it must be determined whether, under the applicable state law, the individual represented the State or the County when he or she acted in the

allegedly unconstitutional manner." *Id.* To determine whether a particular official acts as a county or state policy-maker for purposes of municipal liability, the Court must look to the particular action or decision that is being assailed and the state law pertaining to the characterization of the decision or action at issue; the state's characterization of the action or decision is controlling. *See McMillian v. Monroe County,* 520 U.S. 781, 793 (1997),

Although *Reitz* expressly declined to reach the issue whether prosecutors were state or county policymakers, *see* 125 F.3d at 146 n.2, the Court nevertheless does not write on a blank slate. More recently, the Middle District of Pennsylvania addressed the very issue facing this Court — *i.e.,* whether Pennsylvania's prosecutors are "policy-makers" for purposes *ofMonell* liability in *Williams v. Fedor,* 69 F.Supp.2d 649 (M.D. Pa.1999), *aff'd,* 211 F.3d 1263 (3dCir. 2000). After a thorough analysis of the functions performed by Pennsylvania's district

attorneys and the way that the state law characterizes their actions, *Williams* held that "when engaged in his or her basic function — enforcement of the Commonwealth's penal statutes [—] a district attorney in Pennsylvania represents the interests of the Commonwealth and not the County." *Id.* at 660 (citation and internal quotation marks omitted). Although the court recognized that district attorneys in Pennsylvania perform both county and state functions, it found that, at least "in his prosecutorial capacity, the District Attorney is clearly performing a state function." *Id.* at 663 n. 16. On that basis, the court found that the county could not be held liable for a prosecutor's actions under § 1983. *See id.* at 663; *see also Crane v. Cumberland County, Pa.*, No. 99-CV-1798, 2000 WL 34567277, at * 3 (M.D. Pa. June 16, 2000), *aff'd* 64 F. App'x 838 (3d Cir. 2003).

The Court is persuaded by the reasoning set forth at length in *Williams,* The only "policy" that Plaintiff has identified — specifically, the Fayette

County District Attorney's Office supposed "policy"of failing to disclose *Brady* material — involves the core prosecutorial decision as to which evidence must be divulged. *See Wilkinson v. Ellis,* 484 F.Supp. 1072, 1083 (D.C. Pa. 1980)("Prosecutors make *Brady* judgments when they decide whether to turn evidence over to the defense or when they respond to a court's question as to whether there is 'exculpatory' evidence in their files."). If "enforcement of the Commonwealth's penal statutes" is the "basic function" of the district attorney, *see Williams,* 69 F.Supp.2d at 660, then compliance with rulings by the United States Supreme Court is even more "basic."

In sum, Plaintiff's allegations of municipal liability in Count VIII of the Complaint are deficient in that they do not identify any policy-makers for whose actions Fayette County can be held liable. Defendants Warman and Solomon were prosecutors who acted in their prosecutorial capacity when they decided whether or not to relinquish *Brady* material. At least in Pennsylvania, prosecutors are performing

state — not county— functions when they act in their prosecutorial capacity. Thus, and for all of the aforementioned reasons, any portions of Plaintiff's § 1983 claim of municipal liability that are not barred by *Heck* or the applicable statute of limitations must be dismissed for failure to state a claim.

D. Because Rule 12(b)(6) Requires Dismissal of the Remaining Counts, the Entire *Complaint Must be Dismissed*

Having decided that Plaintiff has yet to enjoy a "favorable termination" within the meaning of *Heck,* the Court must now decide what to do with this civil matter. Plaintiff urges the Court to stay any Heck-barred claims pending appeal. *(See* Brief in Opposition at 3). Defendants disagree, arguing that until there is a favorable termination of the proceedings there is no "case or controversy" to stay. *(See* Warman Reply at 5-8). The Court finds that dismissal is proper here.

As Defendants point out, *Heck* observed that there is "no cause of action under § 1983 unless and

until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Heck,* 512 U.S. at 489. Some of the concurring Justices explained that the "favorable-termination" requirement was designed to avoid "requiring federal courts to stay, and therefore to retain on their dockets, pre-maturely filed § 1983 suits." *Heck,* 512 U.S. at 499 (Souter, J., concurring). Thus, at least to the extent that Plaintiff's § 1983 action is predicated on theories of malicious prosecution, deprivation of due process and a fair trial, and a conspiracy to accomplish same — *i.e.*, those claims which necessarily would imply the invalidity of his conviction — they do not present a case or controversy. If the only live claims remaining in this action are Heck-barred, then Article III of the United States Constitution would force the Court to dismiss, rather than stay this proceeding. But as long as *some* of Plaintiff's federal claims remain alive, there is precedent supporting a stay of the proceedings to permit a final termination of the

heretofore Heck-barred claims.[13]

As explained above, only Counts ILL V, and portions of Counts VI, VII, and VIII are Heck-barred. The Court rejects the Fayock Defendants' contention that any of Plaintiff's other claims — namely, his causes of action for false arrest, false imprisonment, abuse of process, and conspiracy and municipal liability (to the extent these last three claims are not predicated on one of the first three theories) — are barred by *Heck*. Given that at least some of Plaintiff's claims are not controlled by *Heck*, a stay would lie within this Court's discretion but only if some of the federal claims falling outside of the *Heck* bar remained alive.

As explained above, all of the non-Heck-barred claims are either barred by the applicable

[13] *See, e.g., Blair v. Anderson*, No. 4:04cv3229, 2006 WL 2128010, at *4 (D. Neb.July 26, 2006) (staying action where the plaintiff's complaint asserted claims that were *Heck*- barred along with other claims which were not barred); *see also Bush v. Strain*, No. Civ.A, 032836, 2004 WL 1158038, at *5 (E.D. La. May 24, 2004)(same).

statute of limitations or otherwise fail to state a claim upon which relief can be granted because none of the Defendants was a Fayette County policy-maker as a matter of law. Permitting amendment of the claims that fall outside the sweep of *Heck* would be pointless in these circumstances. *See Garvin v. City of Philadelphia,* 354 F.3d 215, 222 (3d Cir.2003) (stating that amendment of a complaint would have been futile where "the amended complaint could not have withstood a motion to dismiss on the basis of the statute of limitations"); *see also Miller v. Calhoun County,* 408 F.3d 803, 818 (6th Cir. 2005) (affirming district court's dismissal of municipal liability claim without leave to amend where, because none of the defendants was a policy-maker, amendment would have been futile). Putting aside those claims which are premature under *Heck,* then, there is simply nothing left to stay. Accordingly, the Court agrees with Defendants that the entire action must be dismissed.[14]

IV. CONCLUSION

Based upon the foregoing, the motions to dismiss filed on behalf of the Defendants shall be granted. An appropriate order will follow.

Cercone, J.

[14] In light of the Court's dismissal of the matter, the Warman Defendants' motion to strike portions of the Complaint pursuant to Rule 8 of the Federal Rules of Civil Procedure is denied as moot. *(See* Warman Brief at 23-27).

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

DAVID JOSEPH MUNCHINSKI,

Plaintiff,

v.

2:05cv1125
Electronic Filing

GERALD SOLOMON, in his individual capacity as District Attorney of Fayette County, Pennsylvania; **RALPH WARMAN**, in his individual capacity and in his official capacities as District Attorney and First Assistant District Attorney of Fayette County, Pennsylvania; **JOHN A. KOPAS**, III, in his individual capacity and in his official capacity as First Assistant District Attorney of Fayette County, Pennsylvania; **HUMPHREY LUICACHIK**, in his individual capacity and in his official capacity as Chief County Detective, Fayette County, Pennsylvania; **GEORGE FAYOCK**, in his individual capacity; and **ROBERT MANGIACARNE**, in his individual capacity and in his official capacity as Chief County Detective, Fayette County, Pennsylvania,

Defendants.

ORDER OF COURT

AND NOW, this 16th day of August, 2006, upon consideration of the Motions to Dismiss filed on behalf of Defendants, George Fayock and Robert Mangiacarne **(Document No. 3)**, Defendant, Humphrey Lukachik, **(Document No. 8)**, and Defendants, John A Kopas, III, Gerald Solomon, and Ralph Warman[15] **(Document No. 13)**, the responses thereto, and the briefs filed in support thereof, for the reasons set forth in the above Memorandum,

IT IS HEREBY ORDERED that Defendants' motions to dismiss are **GRANTED.**

IT IS FURTHER ORDERED that the motion to strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure **(Document No. 13)** and the supplemental motion to dismiss filed on behalf of Defendant Kopas **((Document No. 18)** are **DENIED** as moot. The Clerk shall mark this case closed.

[15] Included in the motion to dismiss filed on behalf of Kopas, Solomon and Warman was a motion to strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

/s/ David Stewart Cercone
David Stewart Cercone United States District Judge

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 06-4093/07-1345

DAVID JOSEPH MUNCHINSKI

Appellant

v.

GERALD SOLOMON, in his official capacity as Distirct Attorney of Fayette County, Pennsylvania; RALPH WARMAN, in his official capacities as District Attorney and First Assistant District Attorney of Fayette County, Pennsylvania; JOHN A. KOPAS, III, in his official capacity as First Assistant District Attorney of Fayette County, Pennsylvania; HUMPHREY LUKACHIK, in his official capacity as Chief County Detective, Fayette County, Pennsylvania; GEORGE FAYOUCK, in his official capacity as Chief County Detective, Fayette County, Pennsylvania; ROBERT MANGIACARNE, in his official capacity as Chief County Detective, Pennsylvania

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Appeal from the United States District Court for the Western District of Pennsylvania
(D.C. Civil Action No. 05-cv-01125)
District Judge: Honorable David S. Cercone

Submitted Under Third Circuit LAR 34.1(a)
September 28, 2007

Before: AMBRO, JORDAN and ROTH, Circuit Judges
(Opinion filed October 26, 2007)

OPINION

AMBRO, Circuit Judge

David Joseph Munchinski appeals the dismissal of his claims brought under 42 U.S.C. § 1983 and state tort law. At issue are the classification of prosecutors for purposes of sovereign immunity, the application of Supreme Court precedent regarding federal courts' respect for state-court decisions, and the application of the statute of limitations for § 1983 and state-tort claims. We affirm the District Court's decision in all respects.

I.

In 1986, Munchinski was convicted (at re-trial) for the 1977 murder of two men in Fayette County, Pennsylvania. In October 2004, in a Post-Conviction Relief Act (PCRA) proceeding, the Commonwealth Court of Common Pleas vacated Munchinski's conviction because of prosecutorial misconduct. While Pennsylvania's appeal of that decision was pending in

state court, Munchinski brought an action under 42 U.S.C. § 1983 against appellees Gerald Solomon, Ralph Warman, John A. Kopas, III, Humphrey Lukachik, and Robert Mangiacarne in their official and individual capacities, and appellee George Fayouck in his individual capacity. The first three appellees are former District Attorneys and First District Attorneys. The latter three are retired detectives and police officers.

Munchinski alleged six violations of his constitutional rights under the Fourth, Sixth and Fourteenth Amendments to our Constitution: false arrest, false imprisonment, malicious prosecution, abuse of process, deprivation of his right to a fair trial and conspiracy to violate his civil rights. He also brought state tort claims for false arrest, false imprisonment, malicious prosecution, and abuse of process. Finally, he alleged municipal liability for all the torts involved.

After Munchinski filed his § 1983 claim in the United States District Court for the Western District of Pennsylvania in August 2005, the Superior Court of Pennsylvania reversed the decision of the Court of

Common Pleas and reinstated Munchinski's conviction. The Supreme Court of Pennsylvania denied Munchinski's application for appeal. *Commonwealth v. Munchinski,* 918 A.2d744 (Pa.2007). In August 2006, the District Court granted appellees' motion to dismiss on all counts. In January 2007, it denied Munchinski's motion to take the deposition of Montgomery Goodwin, a witness in ill health. Munchinski appeals these decisions.

II.

The District Court's opinion rested on three grounds. First, *Heck v. Humphrey* 512 U.S. 477 (1994), bars § 1983 claims that would challenge the validity of a state-court conviction unless "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486-87. Second, the counts not barred by Heck v. Humphrey were outside the two-year statute of limitations for personal injury lawsuits in Pennsylvania that our Court applies to § 1983 actions. *Sameric Corp. of Delaware, Inc. v. City of Phila.*, 142

F.3d. 582, 599 (3d Cir. 2004). Finally, Munchinski's claim of municipal liability failed to state a claim on which relief can be granted because Warman and Solomon acted in their prosecutorial capacity, not as municipal policymakers.

Munchinski appeals the District Court's decision and alleges that the District Court erred: (1) in its reasoning on the municipal liability claim; (2) in failing to read the PCRA court's decision as barring a new trial and granting his release; (3) by not applying equitable estoppel; and (4) by denying him leave to despose Goodwin. We exercise plenary review over Rule 12(b)(6) dismissals, "accepting all well-pleaded allegations as true and drawing all reasonable inferences in favor of plaintiffs." *In re Adams Golf, Inc. Secs. Litig.*, 381 F.3d 267, 273 (3d Cir. 2004). We review the District Court's decision not to allow the deposition for abuse of discretion. See *Gallas v. Supreme Court of Pa.*, 211 F.3d 760, 778 (3d Cir. 2000).

The District Court correctly analyzed the role of the prosecutors in this case and properly applied McMillan v. Monroe County, 520 U.S. 781 (1997). We agree that the prosecutors' decisions were not Fayette

County policy but rather were undertaken in the course of their prosecutorial duties. As a result, the prosecutors have the benefit of Pennsylvania's sovereign immunity and the District Court properly dismissed Munchinski's claim for municipal liability.

We also agree with the Court's reasoning that Heck v. Humphrey bars Munchinski's claims of malicious prosecution and denial of a right to a fair trial, as well as his conspiracy claim, state-tort claims, and municipal liability claim to the extent they rely on the invalidity of his conviction. The Pennsylvania Superior Court decision reversing the PCRA court's decision makes moot Munchinski's second argument to the contrary. Regardless whether the PCRA court barred a new trial, Munchinski no longer has a favorable final result in a state-court proceeding that would allow his claims to survive the bar of Heck.

We choose not to apply equitable estoppel in this case because we find Munchinski's reasoning unpersuasive. The District Court concluded that the statute of limitations barred Munchinski's allegations of false arrest, false imprisonment, and abuse of process, as well as conspiracy, state-tort, and

municipal-liability claims to the extent they do not rely on the invalidity of his conviction. Even if the statute of limitations ran from the time Munchinski discovered evidence that appellees allegedly withheld (rather than the time of the withholding), arguably as late as 2001, Munchinski failed to file his § 1983 claims within two years of that discovery, waiting until August 2005. Munchinski protests that prosecutorial misconduct is the very source of his delay in filing these claims. But the reason for the delay in discovering the alleged misconduct has nothing to do with the timing of his legal actions once that discovery had been made.[1]

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[1]This might seem to put Munchinski between a rock and a hard place, requiring him to wait for some of his claims to ripen (conditional on a favorable state-court outcome) and to avoid delay in filing any claims not barred by *Heck v. Humphrey*. But Munchinski's position was far from impossible. One possible legal strategy would have been to file all alleged prosecutorial misconduct. Once the case was filed and the appellees put on notice, the District Court could have stayed the entire case while the state-court proceedings played out or ruled only on the claims not barred by *Heck* while staying the remaining claims. But the timing of Munchinski's complaint here—waiting for a favorable state-court outcome before filing any of his claims—cannot succeed with respect to the claims not barred by Heck. That delay does not satisfy the statute of limitations and does not respect the well-known policies behind it, such as notice and repose.

Finally, because Munchinski's claims are barred because we do not apply equitable estoppel in this case, we do not believe that the District Judge abused his discretion in not allowing Goodwin's deposition. The deposition could not affect the outcome of this case, since it could not overcome the impediments of Heck v. Humphrey and the statute of limitations.

* * * * *

For these reasons, we affirm the District Court's decision to dismiss Munchinski's § 1983 claims against all appellees.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 06-4093/07-1345

DAVID JOSEPH MUNCHINSKI

Appellant

v.

GERALD SOLOMON, in his official capacity as Distirct Attorney of Fayette County, Pennsylvania; RALPH WARMAN, in his official capacities as District Attorney and First Assistant District Attorney of Fayette County, Pennsylvania; JOHN A. KOPAS, III, in his official capacity as First Assistant District Attorney of Fayette County, Pennsylvania; HUMPHREY LUKACHIK, in his official capacity as Chief County Detective, Fayette County, Pennsylvania; GEORGE FAYOUCK, in his official capacity as Chief County Detective, Fayette County, Pennsylvania; ROBERT MANGIACARNE, in his official capacity as Chief County Detective, Pennsylvania

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Appeal from the United States District Court for the Western District of Pennsylvania
(D.C. Civil Action No. 05-cv-01125)
District Judge: Honorable David S. Cercone

Submitted Under Third Circuit LAR 34.1(a)
September 28, 2007

Before: AMBRO, JORDAN and ROTH, Circuit Judges

JUDGMENT

These causes came on to be heard on the record before the United States District Court for the Western District of Pennsylvania and were submitted pursuant to Third Circuit LAR 34.1(a) on September 28, 2007.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgments of the District Court entered August 16, 2006 and January 4, 2007, are hereby affirmed. Cost taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/Marcia M. Waldron
Clerk

Dated: October 26, 2007

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 06-4093 / 07-1345

DAVID JOSEPH MUNCHINSKI,

Appellant

V.

GERALD SOLOMON, in his official capacity as District Attorney of Fayette County, Pennsylvania; RALPH WARMAN, in his official capacities as District Attorney and First Assistant District Attorney of Fayette County, Pennsylvania; JOHN A. KOPAS, III, in his official capacity as First Assistant District Attorney Of Fayette County, Pennsylvania; HUMPHREY LUKACHIK,in his official capacity as Chief County Detective, Fayette County, Pennsylvania; GEORGE FAYOUCK, in his official capacity as Chief County Detective, Fayette County, Pennsylvania; ROBERT MANGIACARNE, in his official capacity as Chief County Detective, Fayette County, Pennsylvania

(D.C. Civil Action No. 05-cv-01125)

Present: SCIRICA, Chief Judge, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, and ROTH,* Circuit Judges, District Judge

SUR PETITION FOR REHEARING EN BANC

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit

* Senior Judge Roth's vote is limited to panel rehearing only.

judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is DENIED. Note that Judge Sloviter would have granted rehearing.

By the Court,
/s/ Thomas L. Ambro, Circuit Jud

Dated: December 11, 2007
TW/cc: Noah Geary, Esq.
Calvin R. Koons, Esq.
Kemal A. Mericli, Esq.
Dennis J. Roman, Esq.
John H. Williams Jr., Esq.